

The opinion in support of the decision being entered today was *not* written for publication and is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JOHN T. WOLF,
RAM K. RAMESH AND
GEORGE D. WOFFORD

Appeal 2006-2805
Application 09/843,990
Technology Center 3700

Decided: November 17, 2006

Before KIMLIN, TIMM, and GAUDETTE, *Administrative Patent Judges*.
KIMLIN, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 21-23 and 25-33.
Claim 21 is illustrative:

21. A process for packaging a product, comprising the steps of:

(A) placing a first product into a flexible, heat-shrinkable bag, the bag having an open top, whereby a first bagged product having excess bag length results, and wherein the bag comprises a multilayer film comprising:

- (1) a first layer, which is an inside bag layer, and which comprises polyolefin;
- (2) a second layer comprising at least one member selected from the group consisting of polyolefin, polystyrene, and polyurethane;
- (3) a third layer comprising a polyamide having a melting point of 160°C and below; and
- (4) a fourth layer, which is an outside bag layer, the fourth layer comprising polyester; and

wherein the bag is produced by sealing the first layer to itself, whereby the first layer is an inside bag layer and the fourth layer is an outside bag layer;

(B) repeating the placing step with a second product and a second bag, whereby a second bagged product results;

(C) stacking at least the first and second bagged products so that the excess bag length of each of the bagged products are on top of one another within a sealing distance of a means for heat-sealing;

(D) heat-sealing the inside layer of first bag to itself in the region between the open end of the first bag and the product, and the inside layer of the second bag to itself in the region between the open end of the second bag and the product, so that the first product is completely sealed within the first bag and the second product is completely sealed with the second bag, the sealing being carried out at a temperature so that the resulting packaged products can be freely separated from one another without layer delamination.

In addition to the admitted prior art represented by Nishimoto (US 5,446,549), the Examiner relies upon the following references as evidence of obviousness:

Gill	US 3,919,033	Nov. 11, 1975
Oberle	US 4,469,742	Sep. 4, 1984

Appellants' claimed invention is directed to a process for packaging a product in a flexible, heat-shrinkable bag. The bag comprises a multi-layer film comprising a first layer of polyolefin, which is an inside bag layer, a second polymeric layer, a third layer comprising a polyamide having a melting point of 160°C and below, and a fourth outside bag layer comprising a polyester. According to Appellants' Specification, they "have discovered that we can produce a film having an outer polyester layer and an inner layer of polyamide having a melting point within the temperature range of 160°C and below, while obtaining a film of relatively uniform thickness, relatively uniform dimensions, and with a relatively uniform load on the extruder" (page 2 of Specification, last paragraph). The Specification contrasts the inner polyamide layer of the present invention with the inner polyamide layer of the admitted prior art disclosed in Nishimoto. The Specification relates that the film of the present invention has a lower melting polyamide than the polyamide of Nishimoto, exhibits improved heat-shrinkability over the film of the Nishimoto patent "in that it can be oriented at a lower temperature, thereby providing our film with the ability to shrink at a lower temperature [which] is most advantageous in the packaging of heat-sensitive products, such as food products, especially fresh meat products, which can be scorched or otherwise discolored by exposure to heat utilized to shrink the film tightly against the meat" (page 3 of Specification, first paragraph).

Appealed claims 21-23, 25-27, and 29-33 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the admitted prior art (Nishimoto) in view of Gill. Claim 28 stands rejected under 35 U.S.C. § 103 as being unpatentable over the stated combination of references further in view of Oberle.

We have carefully reviewed the respective positions advanced by Appellants and the Examiner. In so doing, we find ourselves in agreement with Appellants that the Examiner has failed to establish a prima facie case of obviousness for the claimed subject matter. Accordingly, we will not sustain the Examiner's rejections.

There is no dispute that Nishimoto discloses the claimed process for packaging a product with the exception of not disclosing the claimed third layer of a polyamide having a melting point of 160°C and below. As stressed by Appellants, Nishimoto teaches an "intermediate layer of a polyamide having a melting point of higher than 160°C. and lower than 210°C." (col. 2, ll. 29-31), and the reference further explains that "[i]n order to facilitate the stretching of a laminate of the polyamide and the polyester, an aliphatic polyamide having a melting point of more than 160°C. and lower than 210°C. is preferably used" (sentenced bridging columns 2 and 3). In addition, Appellants point to comparative examples in Nishimoto to demonstrate that polyamides having a melting point outside the disclosed range of 160°C-210°C produce unfavorable results. Significantly, Nishimoto provides no teaching that one may utilize a polyamide having a melting point outside the disclosed range and achieve acceptable results.

To remedy the deficiency of the admitted prior art, the Examiner relies upon Gill for teaching a polyamide having a melting point within the claimed range "for the purpose of producing a strong bond" (see Office Action mailed May 6, 2004, page 3). According to the Examiner, it would have been obvious for one of ordinary skill in the art to practice the process of the admitted prior art by using the known polyamide disclosed by Gill in order to create a strong bond.

We agree with Appellants that the problem of modifying the admitted prior art in accordance with Gill is at least two-fold. First, the admitted prior art provides a strong teaching away from utilizing an inner polyamide layer having a melting point of 160°C and below. Secondly, Gill is not directed to a process for packaging a product with a flexible, heat-shrinkable bag but, rather, is directed to bonding fabrics using a fusible adhesive comprising a polyamide. Consequently, we do not find that one of ordinary skill in the art would have been motivated to proceed against the expressed teachings of the admitted prior art in selecting a polyamide for the inner layer that is taught by Gill for use in a different process. While the Examiner restates Appellants' argument at page 5 of the Answer, the Examiner offers no more in rebuttal than "the motivation comes from the references themselves and it is not repugnant for the teachings to come from a reference which may appear to be non-analogous" (second paragraph). This falls far short of the requisite analyses pertaining to why one of ordinary skill in the art would have ignored the specific teachings of the admitted prior art in selecting the polyamide of the inner layer. Although the Examiner goes on to explain that the use of a lower melting polymer is always desirable in order to save

money on production, the Examiner's basic premise that the admitted prior art and Gill are "concerned with the same technology" it fundamentally flawed (page 6 of Answer, first paragraph). Simply put, we do not agree that the heat-sealing packaging of the admitted prior art involves the same technology as the bonding of fabrics disclosed by Gill.

The Examiner's further citation of Oberle for the features of claim 28 does not resolve the deficiency in the combination of the admitted prior art and Gill discussed above.

In conclusion, based on the foregoing, we are constrained to reverse the Examiner's rejections.

REVERSED

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